

HOUSE HEALTH AND GOVERNMENT AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 37

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO REAL PROPERTY; AMENDING THE NEW MEXICO SUBDIVISION
ACT TO PROVIDE FOR TRIBAL NOTIFICATION IN SPECIFIED INSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 47-6-2 NMSA 1978 (being Laws 1973,
Chapter 348, Section 2, as amended) is amended to read:

"47-6-2. DEFINITIONS.--As used in the New Mexico
Subdivision Act:

A. "board of county commissioners" means the
governing board of a county;

B. "common promotional plan" means a plan or scheme
of operation, undertaken by a single subdivider or a group of
subdividers acting in concert, to offer for sale or lease
parcels of land where the land is either contiguous or part of
the same area of land or is known, designated or advertised as

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underscored material = new
[bracketed material] = delete

1 a common unit or by a common name;

2 C. "final plat" means a map, chart, survey, plan or
3 replat certified by a licensed, registered land surveyor
4 containing a description of the subdivided land with ties to
5 permanent monuments prepared in a form suitable for filing of
6 record;

7 D. "immediate family member" means a husband, wife,
8 father, stepfather, mother, stepmother, brother, stepbrother,
9 sister, stepsister, son, stepson, daughter, stepdaughter,
10 grandson, stepgrandson, granddaughter, stepgranddaughter,
11 nephew and niece, whether related by natural birth or adoption;

12 E. "Indian nation, tribe or pueblo" means any
13 federally recognized Indian nation, tribe or pueblo located
14 wholly or partially in New Mexico;

15 [~~E.~~] F. "lease" means to lease or offer to lease
16 land;

17 [~~F.~~] G. "parcel" means land capable of being
18 described by location and boundaries and not dedicated for
19 public or common use;

20 [~~G.~~] H. "person" means any individual, estate,
21 trust, receiver, cooperative association, club, corporation,
22 company, firm, partnership, joint venture, syndicate or other
23 entity;

24 [~~H.~~] I. "preliminary plat" means a map of a
25 proposed subdivision showing the character and proposed layout

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1 of the subdivision and the existing conditions in and around it
2 and need not be based upon an accurate and detailed survey of
3 the land;

4 ~~[I.]~~ J. "sell" means to sell or offer to sell land;

5 ~~[J.]~~ K. "subdivide" means to divide a surface area
6 of land into a subdivision;

7 ~~[K.]~~ L. "subdivider" means any person who creates
8 or who has created a subdivision individually or as part of a
9 common promotional plan or any person engaged in the sale,
10 lease or other conveyance of subdivided land; however,
11 "subdivider" does not include any duly licensed real estate
12 broker or salesperson acting on another's account;

13 ~~[L.]~~ M. "subdivision" means the division of a
14 surface area of land, including land within a previously
15 approved subdivision, into two or more parcels for the purpose
16 of sale, lease or other conveyance or for building development,
17 whether immediate or future; but "subdivision" does not
18 include:

19 (1) the sale, lease or other conveyance of any
20 parcel that is thirty-five acres or larger in size within any
21 twelve-month period, provided that the land has been used
22 primarily and continuously for agricultural purposes, in
23 accordance with Section 7-36-20 NMSA 1978, for the preceding
24 three years;

25 (2) the sale or lease of apartments, offices,

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1 stores or similar space within a building;

2 (3) the division of land within the boundaries
3 of a municipality;

4 (4) the division of land in which only gas,
5 oil, mineral or water rights are severed from the surface
6 ownership of the land;

7 (5) the division of land created by court
8 order where the order creates no more than one parcel per
9 party;

10 (6) the division of land for grazing or
11 farming activities; provided the land continues to be used for
12 grazing or farming activities;

13 (7) the division of land resulting only in the
14 alteration of parcel boundaries where parcels are altered for
15 the purpose of increasing or reducing the size of contiguous
16 parcels and where the number of parcels is not increased;

17 (8) the division of land to create burial
18 plots in a cemetery;

19 (9) the division of land to create a parcel
20 that is sold or donated as a gift to an immediate family
21 member; however, this exception shall be limited to allow the
22 seller or donor to sell or give no more than one parcel per
23 tract of land per immediate family member;

24 (10) the division of land created to provide
25 security for mortgages, liens or deeds of trust; provided that

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1 the division of land is not the result of a seller-financed
2 transaction;

3 (11) the sale, lease or other conveyance of
4 land that creates no parcel smaller than one hundred forty
5 acres;

6 (12) the division of land to create a parcel
7 that is donated to any trust or nonprofit corporation granted
8 an exemption from federal income tax, as described in Section
9 501(c)(3) of the United States Internal Revenue Code of 1986,
10 as amended; school, college or other institution with a defined
11 curriculum and a student body and faculty that conducts classes
12 on a regular basis; or church or group organized for the
13 purpose of divine worship, religious teaching or other
14 specifically religious activity; or

15 (13) the sale, lease or other conveyance of a
16 single parcel from a tract of land, except from a tract within
17 a previously approved subdivision, within any five-year period;
18 provided that a second or subsequent sale, lease or other
19 conveyance from the same tract of land within five years of the
20 first sale, lease or other conveyance shall be subject to the
21 provisions of the New Mexico Subdivision Act; provided further
22 that a survey shall be filed with the county clerk indicating
23 the five-year holding period for both the original tract and
24 the newly created tract;

25 [~~M.~~] N. "terrain management" means the control of

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1 floods, drainage and erosion and measures required for adapting
2 proposed development to existing soil characteristics and
3 topography;

4 [N.] O. "time of purchase, lease or other
5 conveyance" means the time of signing any document obligating
6 the person signing the document to purchase, lease or otherwise
7 acquire a legal interest in land;

8 [O.] P. "type-one subdivision" means any
9 subdivision containing five hundred or more parcels, any one of
10 which is less than ten acres in size;

11 [P.] Q. "type-two subdivision" means any
12 subdivision containing not fewer than twenty-five but not more
13 than four hundred ninety-nine parcels, any one of which is less
14 than ten acres in size;

15 [Q.] R. "type-three subdivision" means any
16 subdivision containing not more than twenty-four parcels, any
17 one of which is less than ten acres in size;

18 [R.] S. "type-four subdivision" means any
19 subdivision containing twenty-five or more parcels, each of
20 which is ten acres or more in size; and

21 [S.] T. "type-five subdivision" means any
22 subdivision containing not more than twenty-four parcels, each
23 of which is ten acres or more in size."

24 Section 2. Section 47-6-11 NMSA 1978 (being Laws 1973,
25 Chapter 348, Section 11, as amended) is amended to read:

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1 "47-6-11. PRELIMINARY PLAT APPROVAL--SUMMARY REVIEW.--

2 A. Preliminary plats shall be submitted for
3 type-one, type-two, type-three, except type-three subdivisions
4 that are subject to review under summary procedure as set forth
5 in Subsection I of this section, and type-four subdivisions.

6 B. Prior to approving the preliminary plat, the
7 board of county commissioners of the county in which the
8 subdivision is located shall require that the subdivider
9 furnish documentation of:

10 (1) water sufficient in quantity to fulfill
11 the maximum annual water requirements of the subdivision,
12 including water for indoor and outdoor domestic uses;

13 (2) water of an acceptable quality for human
14 consumption and measures to protect the water supply from
15 contamination;

16 (3) the means of liquid waste disposal for the
17 subdivision;

18 (4) the means of solid waste disposal for the
19 subdivision;

20 (5) satisfactory roads to each parcel,
21 including ingress and egress for emergency vehicles, and
22 utility easements to each parcel;

23 (6) terrain management to protect against
24 flooding, inadequate drainage and erosion; and

25 (7) protections for cultural properties,

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1 archaeological sites and unmarked burials that may be
2 [~~impacted~~] affected directly by the subdivision, as required by
3 the Cultural Properties Act.

4 C. In addition to the requirements of Subsection B
5 of this section, prior to approving the preliminary plat, the
6 board of county commissioners of the county in which the
7 subdivision is located shall:

8 (1) determine whether the subdivider can
9 fulfill the proposals contained in [~~his~~] the subdivider's
10 disclosure statement required by Section 47-6-17 NMSA 1978; and

11 (2) determine whether the subdivision will
12 conform with the New Mexico Subdivision Act and the county's
13 subdivision regulations.

14 D. The board of county commissioners shall not
15 approve the preliminary plat if the subdivider cannot
16 reasonably demonstrate that [~~he~~] the subdivider can fulfill the
17 requirements of Subsections B and C of this section.

18 E. Any subdivider submitting a preliminary plat for
19 approval shall submit sufficient information to the board of
20 county commissioners to permit the board to determine whether
21 the subdivider can fulfill the requirements of Subsections B
22 and C of this section.

23 F. In determining whether a subdivider can fulfill
24 the requirements of Subsections B and C of this section, the
25 board of county commissioners shall, within ten days after the

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1 preliminary plat is deemed complete, request opinions from:

2 (1) the state engineer to determine:

3 (a) whether the subdivider can furnish
4 water sufficient in quantity to fulfill the maximum annual
5 water requirements of the subdivision, including water for
6 indoor and outdoor domestic uses; and

7 (b) whether the subdivider can fulfill
8 the proposals in [~~his~~] the subdivider's disclosure statement
9 concerning water, excepting water quality;

10 (2) the department of environment to
11 determine:

12 (a) whether the subdivider can furnish
13 water of an acceptable quality for human consumption and
14 measures to protect the water supply from contamination in
15 conformity with state regulations promulgated pursuant to the
16 Environmental Improvement Act;

17 (b) whether there are sufficient liquid
18 and solid waste disposal facilities to fulfill the requirements
19 of the subdivision in conformity with state regulations
20 promulgated pursuant to the Environmental Improvement Act, the
21 Water Quality Act and the Solid Waste Act; and

22 (c) whether the subdivider can fulfill
23 the proposals contained in [~~his~~] the subdivider's disclosure
24 statement concerning water quality and concerning liquid and
25 solid waste disposal facilities;

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1 (3) the [~~state highway and~~] department of
2 transportation [~~department~~] to determine whether the subdivider
3 can fulfill the state highway access requirements for the
4 subdivision in conformity with state regulations promulgated
5 pursuant to Section 67-3-16 NMSA 1978;

6 (4) the soil and water conservation district
7 to determine:

8 (a) whether the subdivider can furnish
9 terrain management sufficient to protect against flooding,
10 inadequate drainage and erosion; and

11 (b) whether the subdivider can fulfill
12 the proposals contained in [~~his~~] the subdivider's disclosure
13 statement concerning terrain management; [~~and~~]

14 (5) each Indian nation, tribe or pueblo that
15 provides a written standing request to the board of county
16 commissioners for notification by the county in which the
17 subdivision is located to determine:

18 (a) whether the subdivider can furnish,
19 fulfill or otherwise meet the requirements set forth in
20 Paragraphs (1) through (4) of this subsection; and

21 (b) whether the subdivider's proposed
22 plat may directly affect cultural properties, archaeological
23 sites and unmarked burials; and

24 [~~5~~] (6) such other public agencies as the
25 county deems necessary, such as local school districts and fire

1 districts, to determine whether there are adequate facilities
2 to accommodate the proposed subdivision.

3 G. If, in the opinion of each appropriate public
4 agency or an Indian nation, tribe or pueblo, a subdivider can
5 fulfill the requirements of Subsection F of this section,
6 [~~then~~] the board of county commissioners shall weigh these
7 opinions in determining whether to approve the preliminary plat
8 at a public hearing to be held in accordance with Section
9 47-6-14 NMSA 1978.

10 H. If, in the opinion of the appropriate public
11 agency or an Indian nation, tribe or pueblo, a subdivider
12 cannot fulfill the requirements of Subsection F of this section
13 or, if the appropriate public agency or the Indian nation,
14 tribe or pueblo does not have sufficient information upon which
15 to base an opinion on any one of these subjects, the subdivider
16 shall be notified of this fact by the board of county
17 commissioners, and the procedure set out below shall be
18 followed:

19 (1) if the appropriate public agency or the
20 Indian nation, tribe or pueblo has rendered an adverse opinion,
21 the board of county commissioners shall give the subdivider a
22 copy of the opinion;

23 (2) the subdivider shall be given thirty days
24 from the date of notification to submit additional information
25 to the public agency or the Indian nation, tribe or pueblo

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1 through the board of county commissioners; and

2 (3) the public agency or the Indian nation,
3 tribe or pueblo shall have thirty days from the date the
4 subdivider submits additional information to change its opinion
5 or issue a favorable opinion when it has withheld one because
6 of insufficient information. No more than thirty days
7 following the date of the expiration of the thirty-day period,
8 during which the public agency or the Indian nation, tribe or
9 pueblo reviews any additional information submitted by the
10 subdivider, the board of county commissioners shall hold a
11 public hearing in accordance with Section 47-6-14 NMSA 1978 to
12 determine whether to approve the preliminary plat. Where the
13 public agency or the Indian nation, tribe or pueblo has
14 rendered an adverse opinion, the subdivider has the burden of
15 showing that the adverse opinion is incorrect either as to
16 factual or legal matters.

17 I. If a type-three subdivision contains five or
18 fewer parcels of land, and unless the land within the
19 subdivision has been previously identified in the county's
20 comprehensive plan, as amended or supplemented, or zoning
21 ordinances as an area subject to unique circumstances or
22 conditions that require additional review:

23 (1) if the smallest parcel is not less than
24 three acres in size, the board of county commissioners shall
25 use the same summary procedure for reviewing the subdivision as

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1 the board uses for reviewing type-five subdivisions; or

2 (2) if the smallest parcel is less than three
3 acres in size, the board of county commissioners may use the
4 same summary procedure for reviewing the subdivision as the
5 board uses for reviewing type-five subdivisions.

6 J. Prior to approving the final plat of a type-five
7 subdivision, the board of county commissioners of the county in
8 which the subdivision is located shall:

9 (1) determine whether the subdivider can
10 fulfill the proposals contained in [~~his~~] the subdivider's
11 disclosure statement required by Section 47-6-17 NMSA 1978; and

12 (2) determine whether the subdivision conforms
13 with the New Mexico Subdivision Act and the county's
14 subdivision regulations.

15 K. The board of county commissioners shall not
16 approve the final plat of any type-five subdivision if the
17 subdivider cannot reasonably demonstrate that [~~he~~] the
18 subdivider can fulfill the requirements of Subsection J of this
19 section.

20 L. Any subdivider submitting a plat of a type-five
21 subdivision shall submit sufficient information to the board of
22 county commissioners to permit the board to determine whether
23 the subdivider can fulfill the requirements of Subsection J of
24 this section.

25 M. The board of county commissioners shall by

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1 regulation establish a procedure for summary review for certain
2 type-three subdivisions, as provided in Subsection I of this
3 section, and all type-five subdivisions. If the board of
4 county commissioners fails to adopt criteria for summary
5 review, the board of county commissioners shall approve the
6 plat if it complies with Sections 47-6-3 and 47-6-4 NMSA 1978
7 within the time limitation set forth in Section 47-6-22 NMSA
8 1978. The board of county commissioners may delegate to any
9 county administrative officer or planning commission member the
10 authority to approve any subdivision under summary review.
11 Approval by summary review is conclusive evidence of the
12 approval of the board of county commissioners."

13 Section 3. Section 47-6-20 NMSA 1978 (being Laws 1973,
14 Chapter 348, Section 20, as amended) is amended to read:

15 "47-6-20. PUBLIC AGENCIES REQUIRED TO PROVIDE COUNTIES
16 WITH INFORMATION.--

17 A. Any public agency receiving a request from the
18 board of county commissioners for an opinion and any Indian
19 nation, tribe or pueblo that chooses to submit an opinion
20 pursuant to Section 47-6-11 NMSA 1978 shall furnish the board
21 with the requested opinion within the time period set forth in
22 Subsection A of Section 47-6-22 NMSA 1978. The board of county
23 commissioners shall furnish the appropriate public agency and
24 Indian nation, tribe or pueblo with all relevant information
25 that the board has received from the subdivider on the subject

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1 for which the board is seeking an opinion. If the public
 2 agency or Indian nation, tribe or pueblo does not have
 3 sufficient information upon which to base an opinion, the
 4 public agency or Indian nation, tribe or pueblo shall notify
 5 the board of this fact.

6 B. All opinion requests mailed by the board of
 7 county commissioners shall be by certified mail "return receipt
 8 requested". Boards of county commissioners delivering opinion
 9 requests shall obtain receipts showing the day the opinion
 10 request was received by the particular public agency or Indian
 11 nation, tribe or pueblo."

12 Section 4. Section 47-6-22 NMSA 1978 (being Laws 1973,
 13 Chapter 348, Section 22, as amended) is amended to read:

14 "47-6-22. TIME LIMIT ON ADMINISTRATIVE ACTION.--

15 A. All opinions required of public agencies or
 16 submitted by an Indian nation, tribe or pueblo shall be
 17 furnished to the board of county commissioners within thirty
 18 days after the public agencies [~~receive~~] or Indian nation,
 19 tribe or pueblo receives the written request and accompanying
 20 information from the board of county commissioners. If the
 21 board of county commissioners does not receive a requested
 22 opinion within the thirty-day period, the board shall proceed
 23 in accordance with its own best judgment concerning the subject
 24 of the opinion request. The failure of a public agency or
 25 Indian nation, tribe or pueblo to provide an opinion when

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1 requested by the board of county commissioners does not
2 indicate that the subdivider's provisions concerning the
3 subject of the opinion request were acceptable or unacceptable
4 or adequate or inadequate.

5 B. Final plats submitted to the board of county
6 commissioners for approval shall be approved or disapproved at
7 a public meeting of the board of county commissioners within
8 thirty days of the date the final plat is deemed complete.

9 C. If the board of county commissioners does not
10 act upon a final plat within the required period of time, the
11 subdivider shall give the board of county commissioners written
12 notice of its failure to act. If the board of county
13 commissioners fails to approve or reject the final plat within
14 thirty days, the board of county commissioners shall, upon
15 demand by the subdivider, issue a certificate stating that the
16 final plat has been approved."